

WAC 458-20-155 INFORMATION AND COMPUTER SERVICES.

Persons rendering information or computer services and persons who manufacture, develop, process, or sell information or computer programs are subject to business and occupation taxes and retail sales or use taxes as explained in this rule.

DEFINITIONS

As used herein:

The term "information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium. The term does not include transfers of tangible personal property such as computer hardware or standard prewritten software programs. Neither does the term include telephone service defined under RCW 82.04.065 and WAC 458- 20-245.

The term "computer services" means every method of providing information services through the use of computer hardware and/or software.

*The term "computer system" means a functional unit, consisting of one or more computers and associated software, that uses common storage for all or part of the data necessary for execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation; including arithmetic operations and logic operations; and that can execute programs that modify themselves during their execution.

*The term "hardware" means physical equipment used in data processing, as opposed to programs, procedures, rules, and associated documentation.

*The term "software" means programs, procedures, rules, and any associated documentation pertaining to the operation of a computer system.

The term "custom program" means software which is developed and produced by a provider exclusively for a specific user, and which is of an original, one-of-a-kind nature.

The term "standard, prewritten program," sometimes referred to as "canned" or "off-the-shelf" software, means software which is not originally developed and produced for the user.

The term "provider" means the person who makes available information and computer services to a user.

The term "user" means a person for whom information and/or computer services are provided as a consumer.

DISTINCTION BETWEEN SALES AND SERVICES

Liability for sales tax or use tax depends upon whether the subject of the sale is a product or a service. If information services, computer services or data processing services are performed, such that the only tangible personal property in the transaction is the paper or medium on which the information is printed or carried, the activity constitutes the rendering of professional services, similar to those rendered by a public accountant, architect, lawyer, etc., and the retail sales tax or use tax is not applicable to such charges. This includes the sales of software in connection with custom programs written to meet a particular customer's specific needs. The programs are considered to be the tangible evidence of a professional service rendered to a client and not subject to retail sales tax or use tax.

If, on the other hand, the sale, lease, or licensing of the computer program is a sale or lease of a product, even though produced through a computer system or process, it is taxable as a retail sale. Standard, prewritten software programs do not constitute professional services rendered to meet the particular needs of specific customers, but rather, are essentially sales of articles of tangible personal property. Articles of this type are no different from a usual inventory of tangible personal property held for sale or lease and, irrespective of any incidental modifications to

the program medium or its environment (e.g., adaptation to computer room configuration) to meet a particular customer's needs, the sale or lease of such standard software is a sale at retail subject to retail sales tax or use tax.

BUSINESS AND OCCUPATION TAX

The terms "sale" (RCW 82.04.040) and "retail sale" (RCW 82.04.050) include any transfer of possession of tangible personal property for a consideration. This includes transfers of computer hardware and standard, prewritten software for a charge, regardless that outright ownership or title may not pass to the user, and regardless of any express or implied restrictions upon the user.

RETAILING: All sales, leases, rentals, and licenses to use tangible personal property, including computer systems and all hardware and standard, prewritten software, to users, are subject to the retailing classification of business and occupation tax measured by the gross proceeds of sales derived therefrom. (See RCW 82.04.070.)

WHOLESALEING: When such transfers of tangible personal property as described in the previous paragraph, are for resale by the customer or client in the regular course of business, without intervening use by such persons, they are subject to wholesaling business and occupation tax measured by gross proceeds of sales.

SERVICE: Persons who charge for providing information services or computer services (other than retailing or wholesaling as defined above) are subject to the service and other activities classification of business and occupation tax measured by the gross income of such business. This includes charges for custom program development, charges for on-line information and data, and charges in the nature of royalties for the reproduction, use, and reuse of patented systems and technological components of hardware or software, whether tangible or intangible.

The tax classifications and distinctions explained above will prevail regardless of how the federal government or other tax jurisdictions may classify these transactions for other tax purposes.

RETAIL SALES TAX

The retail sales tax applies to all amounts taxable under the retailing classification of business and occupation tax explained earlier. Providers must collect the sales tax from users of computer systems, hardware, equipment, and/or standard, prewritten software and materials delivered in this state. This includes outright sales, leases, rentals, licenses to use, and any other transfer of possession and the right to use such things, however physically packaged, represented, or conveyed.

The retail sales tax also applies to all charges to users for the repair, maintenance, alteration, or modification of hardware, equipment, and/or standard, prewritten software or materials.

USE TAX

The use tax applies upon the full value of computer systems, hardware, equipment, standard, prewritten software, and materials which are used by consumers in this state and upon which the retail sales tax has not been paid.

The person liable for the tax is the user. However, see WAC 458-20-193B for circumstances under which the seller may be required to collect and report the use tax.

Also, the use tax applies upon the full value of such things which are made available to a user without a charge by a provider in the course of rendering any information or computer service. The person liable for the tax is the provider, as a bailor, or the user, as a bailee. See WAC 458-20-178.

INTERSTATE SALES AND SERVICES

Persons who produce computer systems, hardware, equipment, standard, prewritten software, and materials in this state and who sell, lease, license, or otherwise transfer such things to buyers outside this state and deliver such things outside this state are not subject to either retailing or wholesaling business tax. Such persons are subject to the Manufacturing classification of business and occupation tax. See WAC 458-20-136. The measure of tax is the full value of the product manufactured. See WAC 458-20-112. Retail sales tax does not apply to such interstate deliveries. However, see WAC 458-20-193A for the criteria for perfecting interstate tax exempt sales. Persons who do not themselves produce such things in this state but merely sell such things and deliver outside this state are exempt of business tax and retail sales tax.

Providers of information or computer services in interstate commerce who are taxable under the service business tax classification are governed by the provisions of WAC 458-20-194 (doing business inside and outside the state).

*Definitions marked with an asterisk are taken from Vocabulary for Data Processing, Telecommunications, and Office Systems, IBM, seventh edition (July, 1981).

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